IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1156 of 2004
With
CRIMINAL APPEAL No. 1157 of 2004
With
CRIMINAL APPEAL No. 1158 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRTIBHAI MANDHAVLAL JOSHI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR PM THAKKAR, SR.COUNSEL WITH M/S YOGESH P.YAGNIK, ASHUTOSH R BHATT AND PREMAL S. RACHH for appellants
MR AD OZA, PP WITH MR RC KODEKAR, APP for respondent

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA
and
HONOURABLE MR.JUSTICE MD SHAH
Date : 09/03/2006

COMMON CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. Criminal Appeal No.1156 of 2004 has been filed by the appellant-Kirtibhai Madhavlal Joshi, original accused No.4 in POTA Case No.3 of 2004, Criminal Appeal No.1157 of 2004 has been filed by the appellant-Mahesh Narsidas Patel, original accused No.1 in POTA Case No.5 of 2004(supplementary charge sheet) and Criminal Appeal No.1158 of 2004 has been filed by the appellant-Prahladbhai Prabhudas Patel, original accused No.3 in POTA Case No.3 of 2004 against the common order dated 11-5-2004 passed by the learned Special Judge (POTA) below Exs.105, 106 and 107 in Special (POTA) Case No.3 of 2004 and Ex.2 in Special (POTA) Case No.5 of 2004 whereby the applications filed by the present appellants-accused and accused Nos.1 and 2 namely, Mohamed Yasin Ibrahim Noor and accused Mohamed Kasim Mohamed Yasin Noor for

discharge under Section 227 of the Code of Criminal Procedure (hereinafter referred to as “the Code” for short) and Section 33 of the Prevention of Terrorism Act (hereinafter referred to as “the Act” for short) were rejected.

2. It may be stated at this stage that in all five accused have preferred applications before the learned Special POTA Court for discharge and same have been disposed of by way of aforesaid common order.

3. Against the said order, accused Nos.1 and 2 of POTA Case No.3 of 2004 namely, Mohamed Yasin Ibrahim Noor and Mohamed Kasim Mohamed Yasin Noor had jointly preferred appeal being Criminal Appeal No.1284 of 2004. However, at the end of arguments, learned advocate, Mr.A.P.Shah, appearing for the said appellants-accused Nos.1 and 2 sought permission of the Court to withdraw the same. Hence, said appeal was disposed of as

withdrawn by this Court vide order dated 24-2-2006 after giving opportunity of hearing to learned counsel appearing for the respective parties.

4. It is to be noted that the present Criminal Appeals have been converted from Special Criminal Application Nos.650, 651 and 652 of 2004 respectively. These are very old matters of the year 2004 and could not be disposed of till date and as per the present roster, they have been reflected in our board.

5. As these three appeals arose out of the common order dated 11-5-2004 passed by the learned Special Judge (POTA) below Exs.105, 106 and 107 in Special (POTA) Case No.3 of 2004 and Ex.2 in Special (POTA) Case No.5 of 2004, they have been heard together and are being decided by way of this common judgment and order.

6. The facts in short are that a secret information was received by the Commissioner

of Police, Ahmedabad, from Central Intelligence Agency about the activity of a person namely, Yasin Ibrahim Noor, settled in Dubai and doing terrorist activity in the State of Gujarat by being a member of 'Lashkar-E-Toiba' and also running the network in India by keeping contact with the agency in Pakistan and, therefore, said information was handed over to Joint Commissioner of Police, Crime Branch. Therefore, a special team was formed and investigation started in that direction. Meanwhile, Joint Police Commissioner, Crime Branch, Ahmedabad, received an anonymous letter with a cassette giving details of activities of Yasin Noor. On listening the said cassette, since it was found that one person from Dubai namely, Prem, was contacting one Raval at Dubai about the bomb blasts which had taken place at Ghatkopar in Mumbai, attention of senior Police Officers

was drawn that the person named Prem and the person named in the anonymous letter is one and the same and is actively involved in the terrorist activities. According to prosecution, Prem is the alias name of Yasin Noor. On 4-11-2003, through a secret informant, an information was received to the effect that Yasin Noor and his son Kasim Noor of Al-Habib Flat, Juhapura, Ahmedabad, Gujarat, were keeping illegal arms and ammunition and they are trying to remove them from the said flat. Therefore, the complainant and other police personnel in plain dress accompanied by two independent panchas proceeded towards Al-Habib flat after drawing primary panchnama. When they reached there, they found two persons in the said flat situated on the second floor who introduced themselves as Yasin @ Prem, son of Ibrahim Noor, aged about 58 years and Kasim Noor, son of Yasin @ Prem, aged about 34

years, a permanent resident of Khand-ni-Sheri, Near Jamalpur Pagathiya, Ahmedabad. During their search, cash amounting to Rs.10,417/- was found from Yasin Ibrahim Noor and Rs.225/- from Kasim and they were seized by drawing panchnama. During search in the said flat, they found one gunny bag lying in the loft of the bedroom and on opening the same, one AK 47 rifle, two magazines and 60 live cartridges were found wherein barrel numbers 56-118065274 and 65274 were mentioned and on inquiry, they stated of having no license to keep the said revolver. They were seized and panchnama to that effect was drawn in presence of panchas.

7. During interrogation of these two persons, it was found that they are the original residents of Ahmedabad. Initially Yasin @ Prem was dealing in export of sheep and goat in the name and style of Yasin Khamas Meat Trading from Tuna Port, Kachchh, Gujarat to

Dubai and was permanently settled in Dubai since 1978 having the address of Sona Bazar area, Alsur Road, Near Kuwaiti Mazjid, Dubai. Yasin came in contact with underworld don Dawood Ibrahim during the period 1985 to 1995 while staying in Dubai. He was closely connected with him and was dealing in smuggling activity of gold and electronic goods. Even after Dawood's leaving Dubai for Pakistan, Yasin remained in constant touch with him. It was further revealed during his interrogation that he was closely connected with other persons involved in terrorist activity in South Asia namely, Mohmad Dosa, Mustifa Majnu, Azajkhan Pathan, Khalil Pahalvan, Iju Shaikh, Abdulla Merchant, Aftab Batki, Haji Sattar Teli, Sharad Shetty, Iqbal Mirchi and Abdul Rashidkhan and Tablik Jamat since 1992. He was arranging funds for the above activities and was transferring also. He was also closely connected with Iqbal Lala

of Himmatnagar, Gujarat, Pasa (Bhatkal, Karnataka) and Aziz @ Azad who are staying in Dubai and are connected with SIMI activities. Apart from the above, he was also closely connected with one Saiyed Akbar of Delhi staying in Dubai and doing terrorist activity in India in the name of Davat-e-Islami. It also came out during the interrogation that since he got the information that lives and properties of Muslims staying in Gujarat riots after Godhra carnage were lost, he came in contact with a person named Sufi Chacha, an ISI agent and a resident of Pakistan, having a jewellery shop in the name of Sufi Jewellers in Sona Bazar, Dera, Dubai, and started Jehadi activity in India. In this regard, said Sufi Chacha managed to introduce the main person namely, Mohmed Azar @ Raval @ Rahim @ Bapu at present residing at Dubai and an ISI agent and also the person managing the network of

'Lashkar-E-Toiba' in India and for that, Sufi Chacha involved Yasin Noor in the above referred activities with him as a joint coordinator with an understanding to arrange finance, weapons and give training to youths while Yasin Noor would use his Indian (Gujarat) contacts of local people for doing the terrorist activities in Gujarat, India. With the aforesaid intention in mind, Yasin Noor through his son Kasim Noor staying in Ahmedabad, Gujarat, asked to send names and telphone numbers of Muslim youths interested in involving themselves in terrorist activity and Kasim Noor in turn sent those details. Yasin Noor thereafter talked over phone and also encouraged those youths in their above referred activities. Names of above referred persons were also mentioned in the FIR. Thereafter they also arranged contact of various people all over India willing to involve themselves in this type of activity.

It was further revealed that for doing this Jehadi activity, Yasim Noor illegally sent lakhs of rupees through hawala from Dubai to Mumbai and from Mumbai to Ahmedabad through an agency known as Abdul Latif Money Exchange, a firm situated at Dubai and owned by one Sattar Bapu, originally a resident of Veraval, Gujarat, and also through one Thanmal Marvadi Kaka and Patel Online Services through Kirtibhai Joshi, Prahladbhai Patel and their owners. It was also revealed that same has been utilized for the above referred activities in the State of Gujarat. Not only that, money was sent to other Jehadis actively involved in other places of India namely, Karnataka, Mumbai (Maharashtra), Khanpur (U.P.), Surat(Gujarat), Bas Bareli (U.P.), etc. Further, from the flat of main terrorist of Ghatkopar blast, who lost his life in an encounter with the police, police recovered

cash of Rs.20.00 lakhs. He came from Dubai to Ahmedabad to survey the things and after survey, it was decided to do some fydain attacks in Gujarat in busy places. Therefore, a complaint to that effect was registered against two persons at initial stage being DCB Crime, Ahmedabad City I.C.R.No.11 of 2003 for the alleged commission of offences punishable under Secs. 120-B, 121, 121(c) and 122 of Indian Penal Code; Secs.3(3), 20(c), 21(1) and 22 of the POTA Act and also under Secs.25(1)(A)(a) and 29 of the Arms Act.

8. During the course of further investigation, statements of present appellants-accused were recorded under Sec.32 of the Act along with the statements of other co-accused and also recorded statements of various other witnesses, collected the documentary evidence and called for spectographic report. Thereafter, charge sheet was submitted qua the present accused and other accused.

Therefore, the present appellants and other two accused preferred applications under Sec.227 of the Code as well as under Sec.33 of the Act praying for discharge on the ground that no case is made out for framing of charge against them. On affording opportunity of hearing to the parties concerned and going through the prima facie evidence on record, the learned Special Judge (POTA) vide common order dated 11-5-2004 rejected those applications giving rise to prefer the present appeals.

9. We have heard Mr.P.M.Thakkar, Senior Counsel with M/s Yogesh P.Yagnik, Ashutosh R.Bhatt and Premal S. Rachh, learned advocates for appellants-accused and learned Public Prosecutor, Mr.A.D.Oza with learned Addl. Public Prosecutor, Mr.R.C.Kodekar, for the respondent-State in these appeals.

10. Mr.Thakkar mainly submitted that no prima facie against the accused under POTA or any

other Act or Code has been made out and therefore, no charge can be framed against them. He further submitted that present appellants have nothing to do with other accused from whom arms, ammunition and amounts were recovered. The appellants-Prahladbhai Prabhudas Patel and Kirtibhai Madhavlal Joshi are employees of Patel Onlines having no personal interest in the matter and they have only discharged their duties as employees and therefore, they cannot be called as conspirators of the crime in question. As far as accused-Mahesn Narsidas Patel is concerned, he has nothing to do with Patel Onlines. Though initially he was one of the partners of Patel Onlines, he thereafter resigned from the said partnership firm and at the time of his arrest, he was not a partner of Patel Onlies. He took us through the evidence to that effect which have been produced and relied upon in the

trial court. Though there are statements under Sec.32 of the Act of each accused recorded by the concerned Police Officer, they are not the statements voluntarily given by them. It has been further submitted that since Mahesh Narsidas Patel was assaulted when he was in custody, a complaint to that effect has been made by him and he was sent to hospital by the learned Special Judge and a separate inquiry to that effect is going on. In view of the above, statement of Mahesh cannot be said to be a voluntary one. Further, according to him, all the accused have retracted their statements at the earliest. He further submitted that Mahesh showed apprehension when he was produced before the concerned Judge for extension of police custody the day before his statement under Sec.32 of the Act was recorded by the officer. He further submitted that as per the present law, except the statement of the

accused recorded under Sec.32, statements of co-accused cannot be taken into consideration. Even if the statements of the three appellants recorded under Sec.32 is believed in toto, then also, no ingredients of any offence much less the offence as alleged against the appellants has been established. Except this, there are no other evidence to connect the appellants with the crime in question and therefore, they are required to be discharged.

11. Mr.Thakkar further took us through the statements of employees of Patel Onlines and other persons recorded by the investigating agency as well as through other documentary evidence forming part of charge sheet and submitted that charge cannot be framed against the appellants accused. He further submitted that Prahladbhai and Kirtibhai being employees of Patel Onlines transferred money from one place to another through

`hawala transaction' in Indian currency by receiving it from one Thanmal Marvadi Kaka and this being their routine business for earning more commission, their act should be treated as bona fide. The appellants were not knowing that the money which was being transferred by said Thanmal to Ahmedabad in the account of accused No.2 was coming from Dubai for using in terrorist activities. In view of the aforesaid, it cannot be said that the appellants had a knowledge regarding the above terrorist activity and money has been transferred to Ahmedabad and other cities of State of Gujarat with their knowledge. It is therefore prayed that the appellants-accused may be discharged from the offence in question.

12. Over and above the decisions relied on before the learned Special Court, Mr.Thakkar placed reliance upon the case of State (NCT of Delhi) Vs. Navjot Sindhu and Others, (2005)11

S.C.C. p. 600; State Vs. Nalini (1999) 5 S.C.C. 253, State of Maharashtra Vs. Somnath Thapa, AIR 1996 S.C. 1744, Niamjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijia, AIR 1990 S.C. 1962, Dilawar Balu Kurans Vs. State of Maharashtra, (2002)2 S.C.C. 135 and People's Union for Civil Liberties Vs. Union of India, 2003 AIR SCW p. 7233.

13. Learned Public Prosecutor, Mr.A.D.Oza took us through the statements of appellants accused recorded under Sec.32 together with the statements of other witnesses and also statements of co-accused recorded under Sec.32. Taking us through the lengthy reasoned order passed by the learned Special Judge, he submitted that it is a well reasoned order considering all aspects of the matter and therefore, it does not require any interference. While deciding the application under Sec.227 of the Code, court has to see

whether there is sufficient material to frame charge against the accused or not but court is not bound to evaluate the evidence on record. The learned Special Court has dealt with the scope of Section 227 of the Code and Section 33 of the Act on the basis of law laid down by the Apex Court in paragraph No.11 onwards. The Special Court has taken into consideration the evidence prima facie appearing on record for coming to the conclusion that it is a case wherein charge is required to be framed against the appellants accused. As per the law laid down by the Apex Court, reasons are not required to be assigned for framing of charge. However, if charge is not required to be framed, then in that case, reasons are required to be assigned by the court. While passing order, learned Special Judge has considered all the aspects of the matter including individual case of each accused. In

this regard, he took us through the relevant discussion qua the present appellants more particularly page 36 onwards of the order and submitted that since it is well reasoned order based on settled principles of law, it does not require any interference. According to him, here in this case, POTA Review Committee appointed by the State under Sec.60 has, by a majority opinion, come to the conclusion that there is a prima facie case and hence, charge is required to be framed against the accused under Sec.22(2)(5) of the Act. Even Central Review Committee has also given an opinion that prima facie case is made out against the appellants for framing charge under POTA and, therefore, appeals may be dismissed.

14. Mr.Oza further submitted that prior to preferring these appeals, the appellants and other accused have preferred appeals being Criminal Appeals Nos.501, 1208, 1335 and 1910

of 2004 for enlarging them on bail. Same have been finally disposed of by the Division Bench of this Court by common order dated 21-10-2005 holding that there is a prima facie case against them. In view of the above also, it was submitted that the appeals are required to be dismissed.

15. We have gone through the statements and other evidence on record relied on by the learned counsel for the respective parties along with reasoned order passed by the learned Special Judge (POTA). It is required to be noted that while deciding the matter, Special Court has dealt with the law relating to framing of charge under Sec.227 of the Code as laid down by the Apex Court.

16. For deciding the present appeals, we place reliance upon the following reported decisions of the Apex Court including the judgments relied on by the learned Special Judge:

i) JT 1994(2) S.C. Page 423, Kartar Singh Vs. State of Punjab,

ii) AIR 1996 S.C. p.1744, State of Maharashtra Vs. Somnath Thapa,

iii) AIR 1999 S.C. p. 2640, State of Tamil Nadu Vs. Nalini,

iv) 2000(3) R.C.R. p. 844, Jameel Ahmed Vs. State of Rajasthan,

v)(2002)2 S.C.C. p. 135, Dilawar Balu Kurans Vs. State of Maharashtra,

vi)02(5) S.C.C. p. 234, Devendrapal Singh Vs. N.C.T.Delhi,

vii) 2005(11) S.C.C. p. 600, State (NCT of Delhi) Vs. Navjot Sandhu,

17. The provisions of Section 227 of the Code stipulates that “if upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and show reasons for so doing.” As per the present law, while

framing charge, court has to keep in mind whether is any prima facie case for proceeding against the accused or not. If there is any prima facie, court can proceed with framing of charge.

18. It has been held by the Apex Court in Som Nath Thapa (supra) as under:

“If there is a ground for presuming that the accused has committed the offence, a Court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence. In Black's Law Dictionary word `presume' has been defined to mean `to believe or accept upon probable evidence'. Legal Dictionary has quoted in this context a certain judgment according to which `A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged'. The aforesaid shows that if on the basis of materials on

record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

19. It was held in State of West Bengal Vs. Mohd. Khalid, (1995)1 S.C.C. p. 684 that "what the court has to see, while considering the question of framing is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into."

20. In Dilawar Balu Kurane Vs. State of Maharashtra, (2002) 2 S.C.C. p. 135, it was held by the Apex Court that the function of the Judge is not merely to act as a post office or a mouth piece of the prosecution. He has to sift and weigh the evidence for the limited purpose of finding out whether a prima facie case has been made out, where two views are equally possible and evidence gives rise to some suspicion but not grave suspicion, he can discharge the accused.

21. As far as prima facie case is concerned, the Apex Court has held in Union of India Vs. Prafulla Kumar Samal, 1979 Cri.L.J. p. 154 that while framing charges under Sec.227 of the Code, the test to determine a prima facie would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence

produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

22. Same view has been taken in various other judgments. Keeping in mind the law laid down by the Apex Court in those judgments, we have tried to examine the materials available on record qua the present appellants.

23. It is a settled law that provisions of Sec.32 of the Act permits recording of confessional statement of the accused and that statement qua the particular accused is a substantive piece of evidence and same can be used against them. Here in this case, the statement of each accused has been recorded by the authority under Sec.32 of the Act.

24. We have gone through those statements together with evidence qua other employees of Patel Onlines as well as the statements of other independent witnesses. There are

evidence on record to the effect that huge money was regularly transferred from Mumbai to Ahmedabad, Surat, etc. through Patel Onlines by way of hawala entry. It is also on record that evidence to that effect has been destroyed on the basis that it is their business secrecy that after 15 days of every transaction they destroy the chit as is reflected from the statement of above referred appellants accused and other witnesses. In short, Kirtibhai Joshi has transferred the above money by way of hawala at Ahmedabad and Prahladbhai who is managing the Ahmedabad branch has dealt with the same and money went to accused No.2, the accused No.1. It is also established from various statements that money transferred and given to them by one Thanmal Marvadi Kaka was for the purpose of sending the same to accused No.2 at Ahmedabad. Not only that, there are statements to show that Thanmal used to come

to office of Patel Onlines at Mumbai and gave money for the purpose of sending the same to accused No.2 at Ahmedabad and for that, account was opened at Mumbai in Patel Onlines in the fictitious name of one Bharathbhai and money which has been paid in Bharatbhai's account has been transferred by hawala to accused No.2 at Ahmedabad through Prahladbhai. There are also evidence on record to the effect that money came from Dubai through accused No.1 via Abdul Latif Money Exchange to Thanmal and from Thanmal to Patel Onlines in the account of one Bharatbhai and from there to Prahladbhai at Ahmedabad. There are evidence on record to indicate that same has been disbursed in the terrorist activity. There are also evidence on record to indicate that Thanmal used to talk from the office of Patel Onlines at Mumbai to Dubai in presence of Kirtibhai Joshi and, therefore, it cannot be said that

he had no knowledge. Sometimes Kirtibhai also used to receive calls from Dubai. It is also prima facie seen that Kirtibhai is expert in dealing in illegal foreign currency by way of hawala business and, therefore, it can be said that they had a knowledge that money coming from Dubai through Thanmal is going to only person i.e. the accused No.2 and therefore, it cannot be said that it was a regular business transaction of an angadia firm.

25. Once the said activities were known by the appellants, it was their duty to inform the police or Magistrate of such an intention. It has been held by the Apex Court in paragraph No.321 in Navjot Sandhu (supra) as under:

> “321. Thus, by his illegal omission to apprise the police or Magistrate of the design of Afzal and other conspirators to attack Parliament which is an act of waging war, the appellant Shaukat has made himself liable for punishment for the lesser offence under Section 123 IPC. If he had given timely information, the entire conspiracy would have been nipped in the bud. The fact that there

was no charge against him under this particular section, does not, in any way, result in prejudice to him because the charge of waging war and other allied offences are the subject matter of charges. We are of the view that the accused Shaukat is not in any way handicapped by the absence of charge under Section 123 IPC. The case which he had to meet under Section 123 is no different from the case relating to the major charges which he was confronted with. In the face of the stand he had taken and his conduct even after the attack, he could not have pleaded reasonable excuse for not passing on the information. Viewed from any angle, the evidence on record justifies his conviction under Section 123 IPC.

322. In the result, we find Shaukat Hussain Guru guilty under Section 123 IPC and sentence him to the maximum period of imprisonment of 10 years (rigorous) specified therein. He is also sentenced to pay a find of Rs.25,000 failing which he shall suffer RI for a further period of one year. The convictions and sentences under all other provisions of law are set aside."

26. Having known that the money was coming regularly from Dubai for using it in terrorist activities by the accused Nos.1 and 2 in the State of Gujarat and also for sending the persons for getting training from Pakistan, the appellants have involved themselves into the crime in question by way

of not informing the police or concerned Magistrate about the offence allegedly committed by the main accused Nos.1 and 2. Under the circumstances, it is a case wherein atleast charge is required to be framed against them and make them to face trial. Learned counsel for the appellants has tried to distinguish between the words `illegal' and `terrorist activities'. However, same is not required to be dealt with by this Court at this stage. Once it has been prima facie established that they had not informed the police about their knowledge of terrorist activities of accused Nos.1 and 2, it can be said that they have involved themselves into the crime in question actively and hence, at least it is a case wherein charge is required to be framed against them and make them to face trial. Same view has been taken by the review committee appointed under Sec.60 by the State Government and also by the Central

Review Committee. Moreover, even Division Bench of this Court has also held the prima facie against the present accused and bail has been refused. It is also prima facie appears from the evidence that Maheshbhai and his brother are experts in this type of hawala transaction. Even as per the papers available on record or alternatively as per the arguments of the learned counsel for the appellants, Maheshbhai was the partner of Patel Onlines but as he smelt something, a show was made that he has retired from the partnership firm and Kirtibhai, an employee of Patel Onlines, was joined in his place as one of the partners. As regards retirement from partnership firm, provisions are provided in the Partnership Act and certain questions may arise if they are not followed. We are not entering into those aspects at this stage. As far as assault on Mahesh Narsidas Patel is concerned, separate

proceeding is going on for the same and hence, we do not opine anything about the same at this stage. As far as the point of sanction as contended by the learned counsel for the appellants is concerned, we are of the view that same can be taken into consideration by the learned Special POTA Court at the time of trial.

27. We may make it clear at this stage that the learned counsel for the respective have argued at length and have read statements of various witnesses including the statements of accused. However, keeping in mind the scope of Section 227 of the Code and keeping in mind the fact that charge is yet to be framed and trial is yet to proceed with, if we discuss in detail or appreciate the evidence which have been shown to us and argued on that basis, it may certainly affect the rights of the parties during the course of trial. We however do not make it clear as to

under which section charge is to be framed against the appellants accused as these are appeals against the order passed by the Special POTA Court under Section 227 of the Code. This being the prerogative of the Special POTA Court under Section 228 of the Code, we leave it to the Special POTA Court to apply its mind and after giving opportunity to the parties concerned to frame charge accordingly. Careful examination of the case papers available on record abundantly makes it clear that charge is required to be framed against the accused and, therefore, we are of the view that the order passed by the Special POTA Court is just, legal and proper and it does not require any interference. In view of the above, all these appeals are required to be rejected.

28. Thus, these three appeals are hereby rejected.

29. Since the observations by this Court in this judgment being made for the purpose of deciding these appeals, same may not prejudice the parties in any other proceedings or trial.

30. Office to place a copy of this judgment in each matter.

(R.P.DHOLAKIA,J.)

(M.D.SHAH, J.)

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